

# MAINE STATE LEGISLATURE

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# 124th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2009

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Legislative Document

No. 1285

S.P. 466

In Senate, March 31, 2009

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**An Act To Create the Insurance Fraud Division within the  
Department of Professional and Financial Regulation, Bureau of  
Insurance**

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Reference to the Committee on Insurance and Financial Services suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN  
Secretary of the Senate

Presented by Senator SULLIVAN of York.

1           **Be it enacted by the People of the State of Maine as follows:**

2           **Sec. 1. 16 MRSA §614, sub-§1**, as amended by PL 1999, c. 155, Pt. A, §5, is  
3 further amended to read:

4           **1. Limitation on dissemination of intelligence and investigative information.**  
5 Reports or records that contain intelligence and investigative information and that are  
6 prepared by, prepared at the direction of or kept in the custody of a local, county or  
7 district criminal justice agency; the Bureau of State Police; the Department of the  
8 Attorney General; the Maine Drug Enforcement Agency; the Office of State Fire  
9 Marshal; the Department of Corrections; the Department of Professional and Financial  
10 Regulation, Bureau of Insurance, Insurance Fraud Division; the criminal law enforcement  
11 units of the Department of Marine Resources or the Department of Inland Fisheries and  
12 Wildlife; or the Department of Conservation, Division of Forest Protection when the  
13 reports or records pertain to arson are confidential and may not be disseminated if there is  
14 a reasonable possibility that public release or inspection of the reports or records would:

- 15           A. Interfere with law enforcement proceedings;
- 16           B. Result in public dissemination of prejudicial information concerning an accused  
17 person or concerning the prosecution's evidence that will interfere with the ability of  
18 a court to impanel an impartial jury;
- 19           C. Constitute an unwarranted invasion of personal privacy;
- 20           D. Disclose the identity of a confidential source;
- 21           E. Disclose confidential information furnished only by the confidential source;
- 22           F. Disclose trade secrets or other confidential commercial or financial information  
23 designated as such by the owner or source of the information or by the Department of  
24 the Attorney General;
- 25           G. Disclose investigative techniques and procedures or security plans and  
26 procedures not generally known by the general public;
- 27           H. Endanger the life or physical safety of any individual, including law  
28 enforcement personnel;
- 29           I. Disclose conduct or statements made or documents submitted by any person in  
30 the course of any mediation or arbitration conducted under the auspices of the  
31 Department of the Attorney General;
- 32           J. Disclose information designated confidential by some other statute; or
- 33           K. Identify the source of complaints made to the Department of the Attorney  
34 General involving violations of consumer or antitrust laws.

35           **Sec. 2. 24-A MRSA §2179**, as amended by PL 1973, c. 585, §12, is repealed.

36           **Sec. 3. 24-A MRSA §2186, sub-§4, ¶C** is enacted to read:

37           C. An insurer having knowledge or a reasonable belief that a fraudulent insurance act  
38 is being, will be or has been committed shall provide to the superintendent the

1 information required by the superintendent in a manner prescribed by the  
2 superintendent. For purposes of this subsection, "insurer" does not include an  
3 insurance producer or other person acting on behalf of the insurer.

4 **Sec. 4. 24-A MRSA §2186, sub-§4, ¶D** is enacted to read:

5 D. Any person having knowledge or a reasonable belief that a fraudulent insurance  
6 act is being, will be or has been committed may provide to the superintendent the  
7 information required by the superintendent in a manner prescribed by the  
8 superintendent.

9 **Sec. 5. 24-A MRSA §2187, sub-§1, ¶B**, as amended by PL 2005, c. 433, §1 and  
10 affected by §28, is further amended to read:

11 B. "Authorized agency" or "authorized agencies" means:

12 (1) The Attorney General;

13 (2) A district attorney responsible for prosecution in the municipality where the  
14 fraud occurred;

15 (3) The Federal Bureau of Investigation, or any other federal agency, only for the  
16 purposes of subsection 2;

17 (4) The State Fire Marshal;

18 (5) The Superintendent of Insurance;

19 (6) The Superintendent of Financial Institutions;

20 (7) The United States Attorney's office when authorized or charged with  
21 investigation or prosecution of the insurance fraud in question, only for the  
22 purposes of subsection 2;

23 (8) The State Police, state law enforcement officials or local law enforcement  
24 officials; or

25 (9) The National Association of Insurance Commissioners;

26 (10) An international association of insurance supervisors;

27 (11) An international criminal police organization;

28 (12) A national insurance crime bureau or similar organization that collects,  
29 receives, investigates or analyzes information concerning insurance fraud;

30 (13) Insurance supervisors or law enforcement authorities outside the United  
31 States; or

32 (14) The Workers' Compensation Board.

33 **Sec. 6. 24-A MRSA §2187, sub-§4**, as enacted by PL 1997, c. 675, §2, is  
34 repealed.

35 **Sec. 7. 24-A MRSA §2187, sub-§5**, as enacted by PL 1997, c. 675, §2, is  
36 amended to read:

1           **5. Immunity.** In the absence of fraud, malice or bad faith, any person, including, but  
2 not limited to, an insurer or authorized agency, that furnished information relating to  
3 suspected, anticipated or completed fraudulent insurance acts is not liable for any  
4 damages in any civil action for furnishing the information if that information is furnished  
5 to or received from an authorized agency. In the absence of fraud, malice or bad faith, an  
6 insurer that furnished information to or received information from another insurer for the  
7 purpose of detecting, prosecuting or preventing fraudulent insurance acts is not liable for  
8 any damages in any civil action for furnishing or receiving that information. Nothing in  
9 this subsection is intended to abrogate or modify in any way any common law or  
10 statutory privilege or immunity previously enjoyed by any person.

11           **Sec. 8. 24-A MRS §2188** is enacted to read:

12           **§2188. Insurance Fraud Division**

13           **1. Division established.** The Insurance Fraud Division, referred to in this section as  
14 "the division," is established within the bureau. The division shall work in coordination  
15 with other bureau divisions and staff and other regulatory and law enforcement agencies  
16 to accomplish its duties.

17           **2. Duties.** The duties of the division are to:

18           A. Initiate independent inquiries and conduct independent investigations when the  
19 division has cause to believe that a fraudulent insurance act as defined in section  
20 2186, deceptive insurance practice or insurance deception may be or has been  
21 committed;

22           B. Review reports or complaints of alleged fraudulent insurance acts as defined in  
23 section 2186, deceptive insurance practices and insurance deception from federal,  
24 state and local law enforcement and regulatory agencies, persons engaged in the  
25 business of insurance and the public to determine whether the reports require further  
26 investigation and to conduct these investigations;

27           C. Conduct independent examinations of alleged fraudulent insurance acts as defined  
28 in section 2186, deceptive insurance practices and insurance deception and undertake  
29 independent studies to determine the extent of fraudulent insurance acts, deceptive  
30 insurance practices and insurance deception;

31           D. Assist the superintendent in developing and implementing programs to prevent  
32 fraudulent insurance acts as defined in section 2186, deceptive insurance practices  
33 and insurance deception;

34           E. Assist the Attorney General in the prosecution and prevention of fraudulent  
35 insurance acts, deceptive insurance practices and insurance deception; and

36           F. Prepare any reports regarding fraudulent insurance acts, deceptive insurance  
37 practices and insurance deception required by law.

38           **3. Other law enforcement; regulatory authority.** This section does not:

39           A. Preempt the authority or relieve the duty of other law enforcement or regulatory  
40 agencies to investigate, examine and prosecute suspected violations of law;

1 B. Prevent or prohibit a person from disclosing voluntarily information concerning  
2 fraudulent insurance acts, deceptive insurance practices or insurance deception to a  
3 law enforcement or regulatory agency other than the division; or

4 C. Limit the powers granted elsewhere by the laws of this State to the superintendent  
5 or the division to investigate and examine possible violations of law and to take  
6 appropriate action against wrongdoers.

7 4. Confidentiality. Records that are prepared by, prepared at the direction of or kept  
8 in the custody of the division that contain investigative information are subject to the  
9 requirements of Title 16, section 614, except that the superintendent may share  
10 information with an authorized agency, as defined in section 2187, subsection 1,  
11 paragraph B. Except as provided in Title 16, section 614 or required for a criminal or civil  
12 proceeding, an authorized agency shall hold the information in confidence and may not  
13 release the information to any person other than an authorized agency.

#### 14 SUMMARY

15 This bill establishes the Insurance Fraud Division within the Department of  
16 Professional and Financial Regulation, Bureau of Insurance. The bill requires insurers  
17 with knowledge or suspicion of fraudulent insurance acts to report those activities to the  
18 Superintendent of Insurance. The bill provides for the confidentiality of records relating  
19 to insurance fraud investigations in a manner similar to the provision of confidentiality  
20 under current state law for investigative and intelligence information in the possession of  
21 other law enforcement entities. The bill does permit the Insurance Fraud Division to share  
22 investigatory information with certain national and international agencies. The bill also  
23 extends the immunity provision in current law to certain communications between  
24 insurers with respect to fraudulent insurance acts.